

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARK NUNEZ, et al., :
Plaintiffs, :
- against - : 11 Civ. 5845 (LTS)(JCF)
CITY OF NEW YORK, et al., :
Defendants. :
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UNITED STATES OF AMERICA, :
Plaintiff-Intervenor, :
- against - :
CITY OF NEW YORK and NEW YORK CITY :
DEPARTMENT OF CORRECTION, :
Defendants. :
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[PROPOSED] ORDER PRELIMINARILY APPROVING
CONSENT JUDGMENT, APPROVAL OF CLASS NOTICE, AND
REVISION TO DEFINITION OF CERTIFIED CLASS

WHEREAS, the Plaintiff Class, the United States of America, and Defendants The City of New York (the “City”) and the New York City Department of Correction (the “Department”) have jointly filed a motion asking the Court: (i) preliminarily to approve a proposed Consent Judgment agreed to and executed by the parties; (ii) to approve the (a) content of the proposed notice of the proposed Consent Judgment (the “Class Notice”) to be given to Plaintiff Class members, and (b) the proposed manner of distribution of such Class Notice; and

(iii) to revise the definition of the certified Plaintiff Class as agreed to by the parties in the proposed Consent Judgment;

WHEREAS, the Court has reviewed and considered the proposed Consent Judgment, Plaintiffs' Memorandum in Support of the Joint Motion, and the Declaration of Anna Friedberg, dated July 1, 2015 ("Friedberg Declaration"), along with Attachments A and B thereto (the proposed Consent Judgment and the Class Notice, respectively);

WHEREAS, all of the terms of the proposed Consent Judgment and of the Class Notice are subject to the Court's approval;

NOW, THEREFORE, GOOD CAUSE HAVING BEEN SHOWN, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. Preliminary Approval of the Consent Judgment: The Court hereby preliminarily approves the proposed Consent Judgment and preliminarily finds that its terms are fair, reasonable, adequate, and serve the best interests of the members of the Plaintiff Class, subject to a final determination to be made after the Fairness Hearing.

2. Fairness Hearing: Pursuant to Fed. R. Civ. P. 23(e), the Court will hold a hearing so that it can make a final determination as to whether the proposed Consent Judgment is fair, reasonable, and adequate within the meaning of Rule 23 of the Federal Rules of Civil Procedure and should be signed and entered by the Court (the "Fairness Hearing"). The Fairness Hearing will be held on October 21, 2015 at 2:00 PM, at the United States District Court for the Southern District of New York, 500 Pearl Street, Courtroom 12D. The Court may adjourn the Fairness Hearing from time to time.

3. Approval of Form of Class Notice: The Court hereby approves the content and form of the Class Notice.

4. Method for Giving Class Notice: No later than ten (10) days after the entry of this Order, the Department shall post copies of the Class Notice in English and in Spanish in areas of the law libraries, housing areas, and receiving rooms of each jail where it is reasonably calculated to be seen by inmates in the area, and such copies shall remain posted until the day after valid objections to the proposed Consent Judgment must be postmarked pursuant to Paragraph 5 of this Order. In addition, the Department shall deliver on two consecutive Saturdays (the second and third Saturdays after the date of this Order) a copy of the Class Notice in English and in Spanish to every member of the Plaintiff Class who, at the time of the distribution, is confined in a unit or housing area in which the inmate is held in a cell twenty-three (23) hours per day, including but not limited to all twenty-three (23) hour lock-in punitive segregation units (PSEG I) and all contagious disease units.

5. Written Objections: Any member of the Plaintiff Class may submit to the Court written objections to any aspect of the proposed Consent Judgment. In determining whether the proposed Consent Judgment is fair, reasonable, and adequate, the Court will only consider objections postmarked on or before September 4, 2015. Any later-postmarked objections shall be disregarded by the Court. The parties' counsel shall file responses to any timely objections by October 2, 2015.

6. Class Action Fairness Act Notice: The Defendants shall provide notice of the proposed Consent Judgment to the appropriate federal and state officials as required by the Class Action Fairness Act.

7. Prosecution of Certain Claims Enjoined: The Court hereby enjoins, with immediate effect, until the conclusion of the Fairness Hearing and the Court's final decision with respect to the approval of the proposed Consent Judgment, prosecution by any member of the

Plaintiff Class of any action or claims that are subject to release pursuant to Section XXIII of the proposed Consent Judgment. This injunction is subject to modification, amendment, or termination after such final decision or on further application and good cause shown.

8. Revised Class Definition: On January 7, 2013, the Court entered a stipulated Order, pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(1)(A), and 23(b)(2), certifying a class of: "all present and future inmates confined in jails operated by [the Department], except for the Eric M. Taylor Center and the Elmhurst and Bellevue Prison Wards." Class Cert. Order, ECF No. 61, Jan. 7, 2013. For purposes of the Consent Judgment, Plaintiffs' Class Counsel and the Defendants have agreed to expand the definition of the Plaintiff Class to include all present and future inmates confined in the Eric M. Taylor Center, as set forth in Paragraph 2 of Section II of the proposed Consent Judgment. For good cause shown, the Court hereby revises the definition of the certified Plaintiff Class so that it includes the following individuals: "all present and future inmates confined in jails operated by the New York City Department of Correction, except for the Elmhurst and Bellevue Prison Wards."

Dated: _____, 2015

SO ORDERED:

HON. LAURA TAYLOR SWAIN
UNITED STATES DISTRICT JUDGE